



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Promote Policy and
Program Coordination and Integration in Electric
Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

**REPLY OF THE ENERGY PRODUCERS AND USERS COALITION
TO THE RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY AND
THE OPPOSITION OF PACIFIC GAS & ELECTRIC COMPANY TO
THE PETITION FOR MODIFICATION OF D.04-12-048**

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January 31, 2007

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Pursuant to permission granted telephonically by Administrative Law Judge Brown on January 26, 2007, the Energy Producers and Users Coalition (EPUC)¹ files this reply. This reply addresses faulty arguments and corrects certain mischaracterizations in Pacific Gas & Electric Company's (PG&E) opposition² and Southern California Edison Company's (SCE) response to EPUC's Petition. EPUC's Petition sought modification of the applicability of nonbypassable charges (NBC) related to ongoing, normal utility procurement costs ("Procurement NBC") to customer generation departing load (CGDL).

¹ EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, BP America Inc. (including Atlantic Richfield Company), Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Power and Gas Services Inc., Shell Oil Products US, THUMS Long Beach Company, Occidental Elk Hills, Inc., and Valero Refining Company – California.

² PG&E's response also raises the legal question of sufficiency of notice. (PG&E Opposition, at 8-10.) EPUC does not wish to belabor the point, but EPUC's Petition explicitly did not address this question of law. See Petition, at 17-19. Rather, EPUC's Petition focused on the policy rationale underlying the legal requirement of notice. *Id.* As the Petition explained, awareness that an NBC issue is being addressed does not give customers adequate information about the actual NBC.

I. INTRODUCTION

Sound policy compels the removal of the Procurement NBC for CGDL. The State needs to encourage development of reliable, efficient, in-state generation that contributes positively to greenhouse gas emissions reduction goals; CGDL could provide such generation. Prudent utility planning and reasonable utility procurement should allay any concerns over stranded utility costs and cost shifting. Utility claims to the contrary are nonsense. PG&E basically claims that its forecasting is so fraught with uncertainty as to render it useless. Why, then, does this Commission require the utilities to even engage in forecasting? This claim is absurd. SCE, in essence, argues that SCE is no longer in the normal business of procuring power. What is a more normal course of business activity of an electric utility than the procurement of power? The claim is farcical. These IOU arguments highlight the absurdity of the level of risk protection the utilities have been granted – protection even where no real risk is present. Application of Procurement NBCs to CGDL is unwarranted and contrary to sound policy; the Commission should grant EPUC's petition and remove the imposition of Procurement NBCs on CGDL.

II. REMOVAL OF THE IMPOSITION OF PROCUREMENT NBCS ON CGDL IS IN CALIFORNIA'S BEST INTEREST.

A. Contrary to the IOUs' Claim, Exempting CGDL From the Procurement NBC Is Consistent With State Policy As It Would Not Result in Cost Shifting.

Barring the utilities from imposing Procurement NBCs on CGDL would not contravene the policy of holding bundled customers indifferent because no costs would be shifted as a result of exempting CGDL from Procurement NBCs. Simply put, there can be no cost shift if costs are not caused by these customers in the first place. PG&E

and SCE, however, assert that not charging CGDL customers the Procurement NBC would be inconsistent with state policy aimed at preventing cost shifting. PG&E Opposition, at 6; see *also*, SCE Response, at 3-5. This argument is faulty. The Commission should recognize that its own directives to the utilities require prudent utility planning and procurement. The utilities are ordered to forecast DG and reduce procurement accordingly.

*[E]ach IOU prepared a DG [Distributed Generation] forecast that is based on a forecast of DG operating on the customer-side of the meter. **These estimates are then deducted from the load forecast... This resource counting protocol recognizes that customer-side DG reduces the utility's actual load to be served and the associated reserve margin attributed to that self-served load.***

D.04-12-048, at 70-71(emphasis added); see *also* D.06-11-04, at 2 (similarly stating that customer generation is considered in PG&E's own forecasting and planning process: "***Taking into account...combined heat and power on-site generation incentives, the long-term procurement plan adopted for PG&E established that there is a need for 2,200 megawatts (MW)of new generation in northern California by 2010.***") (emphasis added).

If the utilities are complying with Commission directives, they should not be incurring costs for forecast CGDL. The forecast CGDL customer is not a "benefiting" customer that the utility intended to serve; no procurement commitment, resource adequacy commitment or renewable portfolio standard commitment should have been made on behalf of that forecast customer. While declining to adopt an explicit exemption for cogeneration, this Commission stated in D.06-07-029, "*we construe benefiting customers as defined in Section IV.B.1 as **those customers on whose behalf the costs are incurred.***" D.06-07-029, at 41 and FOF 35 at 59 (emphasis

added). Critically, CGDL customers are not included in the definition of benefiting customers in D.06-07-029. See D.06-07-029, at 26.³ With no costs incurred on behalf of the CGDL customers, no costs could be shifted from them to bundled ratepayers. CGDL customers should therefore not be subjected to a Procurement NBC.

The common sense recognition that no cost shifting would occur when the requisite forecasts reduce procurement and incurred costs underlies the Commission's decision to exempt CGDL customers from the DWR Power Charge.

*It is clear that DWR, when negotiating long-term power contracts, assumed that a certain amount of customer generation departing load would occur every year and therefore did not procure long-term power for that portion of the load. **In fact, such an assumption is based on common sense, since utilities have always faced departing load in various forms, including that caused by an economic downturn, improvements in energy efficiency and building codes, as well as installation of self-generation systems.***

D.03-04-030, at 54 (emphasis added). As the Commission found, "*granting exceptions to certain portions of the CRS for customer generation up to 3000 MW will not result in any cost-shifting among customers, since costs for those MW were not incurred by DWR.*" *Id.*, FOF 20, at 61.

³ Both D.06-07-029 and D.04-12-048 refer to the load uncertainty faced by the IOUs specifically in terms of Community Choice Aggregation (CCA), municipal departing load, and the possible revival of Direct Access. CCA and DA represent different, relatively recently created options for bundled customers to choose over utility service. Customer generation, on the other hand, has been around for as long as IOUs have served bundled customers. In fact, the cite used by SCE specifically defining "benefiting customers" that create uncertainty does not include CGDL customers:

Benefiting customers are defined as all bundled service customers, DA customers, and CCA customers. Benefiting customers are also other customers who are located within a utility distribution service territory, but take service from a local POU subsequent to the date the new generation goes into service.

D.06-07-029, at 26, n. 21; see also D.04-12-048, at 55 ("*The implementation of CCA, departing municipal load, and the potential for lifting, in some form or another, the current ban on allowing new DA all create a great degree of uncertainty as to the amount of load the existing utilities will be responsible for serving in the future.*") CGDL is notable in its absence from the list of potential causes for load uncertainty.

PG&E, however, also mischaracterizes D.03-04-030.⁴ PG&E claims the DWR power charge exemptions were “*limited ... for certain types of CGDG*”, “*primarily tailored for two types of DG*”: small and “ultra-clean and low emission” DG. PG&E Opposition, at 7. This is simply not true. D.03-04-030 actually set one, single overall cap for the DWR power charge exemption applicable to all CGDL. “[W]e will simply rely on the DWR/Navigant model assumptions to set one overall cap of 3,000 MW (the approximate cumulative total (rounded) of DWR’s annual assumptions over ten years) **We will apply this cap to all CG departing load.**” D.03-04-030, at 54 (emphasis added).

After wrongly implying that large CGDL customers were not exempted by the Commission from the DWR Power Charge, PG&E excerpts D.03-04-030’s discussion of the Bond Charge, further confusing the record.⁵ The different treatment of the DWR Bond Charge may be the source of PG&E’s confusion: DG under 1 MW and “low emission and ultra-clean” DG were exempted from the DWR Bond Charge in addition to being exempted from the DWR Power Charge.⁶ Larger CGDL customers, however, paid the Bond Charge as it recovered “water under the bridge” costs. More importantly,

⁴ This is surprising, even given the complexity of D.03-04-030, as PG&E participated in the detailed settlement negotiations and was a party to the settlement agreement that formed the basis for D.03-04-030.

⁵ Notably, the Commission’s treatment of the Bond Charge deviated from the Settlement Agreement to which both PG&E and SCE were parties – the Settlement Agreement had provided for a reduced charge for CGDL customers to recover the historic shortfall. See D.03-04-030, at 16-18.

⁶ SCE was also apparently confused by the disparate treatment and states “*Contrary to EPUC’s claims, cogeneration customers are currently exempt from the following NBCs*” and lists the DWR Bond Charge. SCE Response, at 8. Again, this is surprising given SCE’s participation in the settlement negotiations and the settlement agreement, on par with PG&E. As noted above, (and by PG&E) large CGDL customers, however, were not exempt from the DWR Bond Charge. SCE also perplexingly includes in the table of NBCs from which (according to SCE) CGDL customers are exempt NBCs for which there are no exemptions, *i.e.*, nuclear decommissioning and public purpose program charges. See SCE Response, at 8. More precision on the part of both SCE and PG&E is warranted.

these larger CGDL customers were exempted from the DWR Power Charge, which recovered costs for future power consumption. The Commission's treatment of the Power Charge is more relevant to the consideration of the Procurement NBC than that of the Bond Charge. The Power Charge, like the Procurement NBC, corresponds to *future* or *ongoing* power consumption; the Bond Charge corresponds to past use of power. The Commission should recognize that, as in the case of the Power Charge, cost shifting would simply not occur from the exemption of forecast CGDL from Procurement NBCs, and grant EPUC's Petition.

B. Contrary to IOU Claims, the Resource Adequacy Requirements Have Decreased the Level of Risk To Be Managed By IOUs; These Requirements Do Not Preclude A Reasonable Exemption For CGDL Customers From Procurement NBCs.

SCE appears to recognize that Procurement NBCs are unwarranted for a utilities' normal course of business activities. SCE asserts, however, due to D.06-07-029, that it is no longer procuring power "*in the normal course of business.*" SCE Response, at 4. This claim is ludicrous. There is nothing more normal for an electric utility to do than to procure power. Rather, it is the knee-jerk reaction, an apparent holdover from the energy crisis, of granting the utilities' request for a new cost-allocation methodology that is the abnormality here – not the actual procurement of power.

Both PG&E and SCE point to the Commission's resource adequacy requirements as somehow preventing them from managing any risk associated with forecasting CGDL. See PG&E Opposition, at 11; see *also* SCE Response, at 4. This is the exact opposite of what the RA requirements do. The assertion that the "change" of imposition of RA requirements has created more risk is an absolute falsehood. The RA requirements serve to *reduce* the utilities' risk. For the entirety of their regulatory lives,

the IOUs have been (and continue to be) obligated to conduct their power procurement business in a “reasonable and prudent” fashion. Prior to the RA requirements, this “reasonable and prudent” conduct obligation was subject to a subjective, fuzzy, “I know it when I see it” standard. The RA requirements give the IOUs explicit parameters that now bound their risk.

Moreover, the determination of the RA requirement of a 15-17% Planning Reserve Margin is set **using the utilities’ forecast**, and that forecast, just like the utilities’ procurement forecast, **is supposed to account for CGDL**. *“We therefore direct all LSEs to prepare load forecasts on the basis of their best estimate of future customers and their loads...”* D.04-10-035, at 17. *“No party disputes that customer-side-of-the-meter DG impacts are appropriately **subtracted from load forecasts**.”* Id., at 20 (emphasis added). The IOUs’ arguments that the RA requirements prevent them from managing risk associated with CGDL by forecasting CGDL ignore reality. The RA requirements are supposed to be set using forecasts that include CGDL. In fact, D.04-12-028 recognizes that the reserve margin is impacted by the utilities’ requirement to forecast CGDL: *“This resource counting protocol recognizes that **customer-side DG reduces the utility’s actual load to be served and the associated reserve margin attributed to that self-served load**”* D.04-12-028, at 71 (emphasis added).

PG&E’s claim that its forecast lacks certainty – essentially that it is worthless – should be disregarded by this Commission. See PG&E Opposition, at 11. PG&E, like SCE, is required to forecast, both explicitly by Commission direction and implicitly by the obligation to engage in prudent utility planning and reasonable procurement practice. PG&E, like SCE, has long been in the practice of forecasting. *“[U]tilities have always*

faced departing load in various forms, including that caused by an economic downturn, improvements in energy efficiency and building codes, as well as installation of self-generation systems.” D.03-04-030, at 54.

SCE states, “*the utility cannot eliminate these procurement obligations simply by forecasting cogeneration departing load, as EPUC asserts.*” *Id.* PG&E makes an almost identical claim: “*the IOUs cannot simply eliminate stranded costs by forecasting CGDL.*” PG&E Opposition, at 10. These utility arguments mischaracterize EPUC’s Petition, and the reality of the situation. EPUC’s Petition does not ask for the *elimination* of procurement obligations. The Petition simply asks for the recognition that the utilities’ procurement obligations are reduced by utility forecasts of CGDL. See Petition, at 31.

PG&E also misleadingly references D.04-12-048. PG&E Opposition, at 11. The cited passage, however, addresses the limitations on utilities’ ability to “*quickly adjust their resource portfolios.*” *Id.* (emphasis added). Critically, the process of developing and installing CGDL is not “*quick*”; further, large customers are in frequent contact with the utility throughout the process. See Petition, at 18-19.

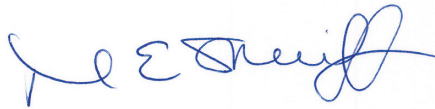
Finally, the important clarification that both utilities have provided regarding their position should be noted. Customers who depart PG&E’s or SCE’s bundled service prior to the operational start date of the facility whose uneconomic costs are the object of the Procurement NBC will not be subject to it. “[O]nly facilities or contracts entered into before a customer departs” would be the subject of Procurement NBCs. (PG&E Response, at 10). Similarly, SCE states that customers who departed from utility service would be subject to the Procurement NBC for only those resources “*acquired*

while they took bundled service from the utility.” SCE Response, at 1. While imposition of any Procurement NBC on CGDL is unsound public policy, the clarification that Procurement NBCs would not be imposed on CGDL customers whose departure predates the facility’s operational start date is welcome.⁷

III. CONCLUSION

The unwarranted and unquantifiable risk of the Procurement NBC should be removed for CGDL customers. If the IOUs are engaging in prudent utility planning and reasonable procurement, removal of the Procurement NBC for CGDL customers will not result in cost shifting. The IOUs do not need, and moreover, should not receive, this extraneous risk protection for conducting their normal business of electric power procurement.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Evelyn Kahl' and 'Nora Sheriff'.

Evelyn Kahl
Nora Sheriff

Counsel to the
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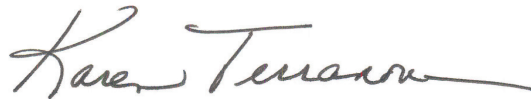
January 31, 2007

⁷ PG&E did not take this position in the CC8 proceeding: See EPUC Opening Brief, at 7-8, in A.05-06-029.

CERTIFICATE OF SERVICE

I, Karen Terranova hereby certify that I have on this date caused the attached **Reply of the Energy Producers & Users Coalition to the Response of SCE and the Opposition of PG&E to the Petition for Modification of D04-12-048** in R.04-04-003 to be served to all known parties by either United States mail or electronic mail, to each party named in the official attached service list obtained from the Commission's website, attached hereto, and pursuant to the Commission's Rules of Practice and Procedure.

Dated January 31, 2007 at San Francisco, California.

A handwritten signature in dark ink, appearing to read "Karen Terranova", with a long horizontal flourish extending to the right.

Karen Terranova

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